

**(2009) 12 MAD CK 0202****Madras High Court****Case No:** S.A. No. 1171 of 2007 and M.P. No. 1 of 2007

The Special Tahsildar, Harijan  
Welfare

**APPELLANT**

Vs

Seenu Reddy and another

**RESPONDENT****Date of Decision:** Dec. 16, 2009**Citation:** (2010) 2 CTC 906**Hon'ble Judges:** R. Banumathi, J**Bench:** Single Bench**Advocate:** Bhavani Subbarayan, for the Appellant; K.S. Gnanasambandam, for the Respondent**Final Decision:** Allowed

### **Judgement**

R. Banumathi, J.

Being aggrieved by enhancement of compensation of Rs. 51,064/- per acre to Rs. 4.28/sq.ft, Government preferred this Second Appeal. An extent of 0.75.0 Hectare of land situate in Palanankuppam Village, Tirupattur Taluk comprised in S. No. 100/2-C and 2-B was acquired for the purpose of providing house sites to homeless Adi-Dravidars under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (hereinafter shortly called as Act 31/78). In pursuant to the same, Section 4(1) notification was issued on 11.3.1996. The sales statistics for one year prior to Section 4(1) notification was taken. In Serial No. 65, S. No. 124/4-A, an extent of 0.23 $\frac{1}{2}$  acre, was sold for Rs. 12,000/-, which was taken as data sale deed. The Land Acquisition Officer fixed the market value for the land acquired at Rs. 51,064/- per acre. After due adherence of statutory provisions of Act 31/78, Land Acquisition Officer passed an award in Award No. 40/95-96 dated 25.3.1996. Being dissatisfied with quantum of compensation, respondents filed appeal in C.M.A. No. 5/96 before Sub-Court, Tirupattur claiming enhancement of compensation. Court has taken Ex. A2-sale deed (dated 30.08.1995) by first respondent Seenu Reddy in favour of one Babu selling S. No. 100/6D, 1741  $\frac{1}{2}$  sq.ft for Rs. 14,000/- and fixed the market value

at Rs. 6.42/- per sq.ft. After deduction of 1/3rd for development charges i.e., Rs. 2.14/sq.ft., Court fixed market value at Rs. 4.28/- sq.ft.

2. In respect of first respondent Seenu Reddy, Court has enhanced the compensation to Rs. 1,80,223.00 as under:

In respect of Second Respondent Jeyachandran, Court has enhanced the compensation to Rs. 2,17,325/- as under:

Court has also ordered interest at the rate of 9%, 12% and 15% for various periods.

3. Being aggrieved by enhancement of compensation and award of interest at various rates for different periods, Government preferred this Second Appeal. In the Second Appeal, Following Substantial questions of law were formulated for consideration:

i. Whether the Court below erred in not appreciating the fact that the market value for the land acquired had been fixed taking into consideration data sale deed under which the land similar in nature, soil, tharam and classification to the land acquired had been conveyed?

ii. Whether the Court below erred in placing reliance on Ex. A2 where under the minuscule extent of land classified as house site had been conveyed?

iii. Whether the Court below erred in not appreciating the statutory provisions of Section 8 of Act 31/78, which clearly prohibits taking into consideration of any enhanced value of the land acquired which is likely to accrue from the future usage to which it will put?

4. The learned Special Government Pleader Ms. Bhavani Subbarayan submitted that when the acquired land is the agricultural land, fixation of value per sq.ft. at Rs. 4.28 is erroneous and on the higher side. It was further contended that Court below erred in placing reliance upon Ex. A2-sale deed (dated 30.08.1995) under which a minuscule extent of property was sold. Interest awarded at higher rat for various periods is also under challenge.

5. The learned counsel for respondent Mr. K.S. Gnanasambandam has submitted that the data sale deed Ex. R2 (20.2.1996) taken is at very far distant place and the acquired land is in the midst of developed area, Court below was right in enhancing the compensation and no substantial questions of law are involved warranting interference.

6. The Land Acquisition Officer has taken the sale deeds from 01.01.1995 to 23.2.1996 totally 66 sale deeds (Ex. R1). From Ex. R1 sale statistics, Serial No. 65, Document No. 201/96 dated 23.02.1996 under which 0.23  $\frac{1}{2}$  acre was sold for Rs. 12,000/- was taken as a data land and per acre value was fixed at Rs. 51,064/-. In his evidence RW 1 has stated that the data land is not far away from the acquired lands and therefore lands sold under Ex. R2 was rightly taken as the data land. Even

though data land is stated to be nearby acquired lands, by perusal of Ex. R3-Plan, it is seen that the data land is very far away from the acquired lands. While so, Land Acquisition Officer was not right in taking Ex. R2 - Document No. 201/96 as data land.

7. When claimants contend that compensation awarded is low, claimants have to prove and demonstrate that compensation awarded by the Special Tahsildar is not adequate and the same does not reflect the true market value of the land on the date of notification u/s 4 of the Act. This could be done by the Claimants by adducing evidence to the effect that on the relevant date, market value of the land in question was such at which the buyer and seller were willing to sell or purchase the land.

8. Referring to capitalization method for determining the value of the land, in State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others, the Supreme Court held as under:

..... In order to appreciate this ground of objection, it is necessary to examine whether the classification of the land under the Act into the land in municipal area and the land in rural area for purposes of determining the amount payable on acquisition is bad. It is not denied that the land in municipal area commands various advantages which are not available in the case of land in rural areas.

9. Determination of the market value of the land depends upon facts and circumstances of each case, amongst them would be the price of the land, amount of consideration mentioned in a deed of sale executed in respect of similarly situated land near about the date of issuance of notification u/s 4(1) of the Act. The area of the land, nature thereof advantages and disadvantage occurring therein amongst others would be relevant factors for determining the actual market value of the property. The purpose for which the land is sought to be acquired would also assume significance. It is on the above mentioned factual back drop and legal principles governing, grant of compensation, the market value of acquired lands are required to be determined.

10. As discussed earlier, acquired lands are situated nearby Palanankuppam Village. Ex. A2 is the sale deed dated 30.8.1995 under which S. No. 100/6-D, 1741 1/2 sq.ft was sold for Rs. 14,000/-. Survey No. 100/6D is stated to be near by the acquired lands. In his evidence CW 1 has stated that on the northern side of acquired land is the Palanankuppam Village, there are also road facilities and the acquired land is stated to be suitable for housing plots. The acquired land is in the midst of developed area. When under Ex. A2 near by land was sold housing plot, the Land Acquisition Officer was not right in fixing market value per acre. Determination of market value is not only of the land value but also the other components like potentiality for development and being developed as house plots. As held in The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh

Vs. Nookala Rajamallu and Others, the principles of fixation of market value with reference to comparable sales are made:

- (i) When sale is within a reasonable time of the date of notification u/s 4(1);
- (ii) It should be a bona fide transaction;
- (iii) It should be of the land acquired or of the land adjacent to the land acquired; and
- (iv) It should possess similar advantages.

11. The above factors are present in Ex. A2-sale deed and therefore, Court below was right in taking Ex. A2 as comparable sale. Fixing of market value at Rs. 6.42 per sq.ft cannot be said to be on the higher side.

12. The learned Special Government Pleader Ms. Bhavani Subbrayan contended that learned Subordinate Judge erred in taking Ex. A2-sale deeds which relates to minuscule extent and arriving at market value without giving any deduction of development charges. There is no force in the contention that Court below ought not to have taken Ex. A2-sale deed as comparable sale merely on the ground that it refers to a small extent. When large tracts are acquired, the transaction in respect of small extent of properties do not offer a proper guideline. When acquired land is in the midst of already developed and when comparable sale sites are taken into account necessary deduction are to be made. As pointed out earlier even though Ex. A2 relating to small extent of 1741   sq.ft was taken as comparable sale, the learned Subordinate Judge had made 1/3rd deduction i.e., Rs. 2.14 and fixed the market value at Rs. 4.28/sq.ft. When smaller extent was taken as comparable sale, Court below has rightly given 1/3rd deduction. The judgment of Lower Court in enhancing the compensation is confirmed.

13. In so far as interest, Lower Court has awarded interest at the rate of 9% from 25.3.96 to 24.3.1997 and 12% interest from 25.3.1997 to 24.3.1998 and 15% interest from 25.3.1998 to till date of deposit. Section 12 of the Act contemplates flat rate of interest at 6% p.a. from the date of taking of compensation. The award of different rate of interest 9%, 12% and 15% is not in accordance with Section 6 of Act 31/1978. So far as award of interest at different rates, the order of the Lower Court is to be modified.

14. As per the order in M.P. No. 1 of 2007 dated 12.11.2007, interim stay was granted on condition that the petitioner depositing 50% of the award amount. It is stated that said amount was also deposited by the Government. In the result, the judgment and decree made in C.M.A. No. 5/96 dated 3.3.2006 on the file of Sub-Court, Tirupattur, Vellore District enhancing the compensation and solatium are confirmed. Award of different rates of interest viz., 9%, 12% and 15% is reduced to 6% per annum from 25.3.1996 till the date of deposit of the amount and the Second Appeal is partly allowed that extent. Claimants/respondents are entitled to withdraw

the entire amount deposited to the credit of C.M.A. No. 5/96 dated 3.3.2006 on the file of Sub-Court, Tirupattur immediately on receipt of copy of this judgment. Balance amount payable has to be deposited by the Special Tahsildar (Land Acquisition), Harijan Welfare, Tirupattur within a period of twelve weeks from the date of receipt of copy of this judgment. On such deposit of balance amount, the claimants are entitled to withdraw the balance amount so deposited. No costs. Consequently, M.P. No. 1 of 2007 is closed.